MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4839 OF 2006

Pandurang Dattu Mali Petitioner
versus
State of Maharashtra & ors. Respondents

Mr.M.S.Topkar for petitioner.

Mr.R.M.Patne, AGP for respondents 1 and 2.

Mr.A.M.Khorde for respondent no.3.

Mr.T.R.Yadav for respondent no.4.

CORAM : F.I.REBELLO AND
R.V.MORE, JJ.

DATE : 19.01.2007

JUDGEMENT (PER : R.V.MORE, J.) :-

1. Heard learned counsel for the parties. Rule. By consent of parties Rule made returnable forthwith.

2. The petitioner by the aforesaid writ petition filed under Article 226 of the Constitution of India takes exception to the impugned order dated 24th March 2006 passed by respondent no.2

refusing approval to petitioner's appointment to the post of Headmaster. The petitioner claims approval to his appointment as Headmaster with retrospective effect i.e. w.e.f. 2nd December 1998 with all the incidental and consequential benefits.

3. The contention of the petitioner is that he was duly qualified to be appointed as an Assistant Teacher and accordingly he was appointed in the year 1992 in a school run by respondent no.3. One Mr.B.H.Patil was employed by respondent no.3 in its V.J.Deshmukh High School as Headmaster. He was dismissed by respondent no.3 from service. The said Mr.B.H.Patil challenged the dismissal by filing an appeal before the School Tribunal, at Kolhapur and got the dismissal order set aside. The order of setting aside the dismissal and order of reinstatement of Mr.B.H.Patil was challenged by respondent no.3 before this Court by way of Writ Petition, which has been admitted and pending for final hearing.

4. It is further contended by the petitioner that the respondent no.3 filed Criminal Case No.205 of 1997 as well as Civil Suit No.1082 of

1999 against said Mr.B.H.Patil for defrauding the respondent no.3 trust and the Government. It is stated that the Civil Court had restrained the respondent no.3 and the Education Department from paying salary of Mr.B.H.Patil. Apart from that, the said Shri B.H.Patil came to be prosecuted in Criminal Case No.139 of 1999 before the Sessions Court, at Kolhapur for the immoral act of molesting a lady. Respondent no.3 sought permission of the Education Officer to suspend said Mr.B.H.Patil. Since the permission was refused, a writ petition came to be filed in this Court seeking permission to suspend said Shri B.H.Patil and for initiation of an enquiry against himIn the mean while, Shri Patil was convicted in the Criminal Case No.139 of 1999 by the Sessions Court and, therefore, this Court directed the Education Officer to grant permission to the respondent no.3 trust to suspend Shri Patil, pending the enquiry into the act of misconduct.

5. Said Shri Patil filed an appeal against the conviction order of the Sessions Court and obtained stay to his sentence and thereafter filed a Civil Application in a writ petition which was filed by respondent no.3 trust seeking

permission to suspend said Mr.Patil. This Court passed an order in the Civil Application to the effect that if Criminal Appeal filed by said Shri Patil is allowed, the respondent no.3 will revoke the suspension.

6. In the Departmental Enquiry which was conducted by the respondent no.3, said Shri B.H.Patil was held guilty and consequently his services came to be terminated vide order dated 8th January 2003. Till today, Shri Patil has not challenged his dismissal from service before any Court of Law including the School Tribunal.

7. It is further the case of the petitioner that the respondent no.3 trust offered the post of Headmaster to the senior most Teacher Shri Jamdade - respondent no.4 herein. However, he declined to accept the same. Thereafter, the third respondent forwarded a proposal to respondent no.2 seeking approval to the appointment of petitioner as Headmaster.

8. In the mean while, on 24th April 2005, said Mr.B.H.Patil was acquitted by the Appellate Court. On the ground of acquittal, said Shri B.H.Patil claimed reinstatement in service.

Respondent no.2 also directed the respondent no.3 to reinstate Shri B.H.Patil as Headmaster. Upon refusal to obey the orders of respondent no.2 by respondent no.3, respondent no.2 threatened the respondent no.3 trust of taking appropriate action. Therefore, respondent no.3 trust filed a writ petition being Writ Petition No.1296 of 2006 in this Court which is admitted and stay is granted to the order of respondent no.2. In the facts and circumstances aforestated the petitioner claims that the impugned order refusing to approve his appointment as Headmaster is illegal, unreasonable and arbitrary to the established principles of law.

9. Learned AGP appearing for respondent nos.1 and 2, per contra, submitted that Shri B.H.Patil is a necessary party to the petition. In his absence the petitioner is not entitled to succeed. It was further pointed out that Shri Patil has been finally acquitted of criminal charges levelled against him, and, therefore, he deserves to be reinstated in pursuance of the orders passed by this Court in Civil Application referred above. It is reiterated that the impugned order dated 24th March 2006 is quite proper and correct as the legitimate claim over

the post of Headmaster is of Shri B.H.Patil and, therefore, the petition is liable to be dismissed.

10. We have given our anxious consideration to the rival submissions of learned counsel and we have also gone through the pleadings and affidavit in reply filed by respondent no.2. So far as preliminary objection of respondent no.2 is concerned, we see no merit and we are of the view that to decide the present controversy Shri B.H.Patil is not a necessary party. Since admittedly said Shri B.H.Patil has already been dismissed from service pursuant to a Departmental Enquiry and so far he has not challenged the order of dismissal in any Court of law. It is true that Shri B.H.Patil was initially convicted in Criminal Case No.139 of 1999 and later on acquitted by a competent Appellate Court. It is also true that this Court in Civil Application filed by said Shri B.H.Patil in a writ petition of respondent no.3, passed an order to the effect that in the event of appeal being allowed of Shri B.H.Patil, the respondent no.3 trust would revoke the suspension of Shri B.H.Patil and reinstate Shri Patil as Headmaster. However, we cannot ignore the effect of disciplinary proceedings

initiated against said Shri B.H.Patil and refusal of respondent no.4 to accept the post of Headmaster. In the departmental proceedings initiated against said Shri B.H.Patil for misconduct, he was found guilty and thereafter respondent no.3 terminated the services of Shri B.H.Patil vide order dated 18th January 2003. The dismissal of Shri B.H.Patil is during the pendency of criminal proceedings against him. There is no bar to proceed against an employee simultaneously. Further, it is also not disputed that said Shri Patil has not challenged his dismissal from service before any Court of Law including the School Tribunal. The argument of respondent no.2 that consequent to acquittal of Shri Patil by the Appellate Court of criminal charge, entitles him to be reinstated in the service as Headmaster, is, therefore, liable to be rejected.

11. Be that as it may, the respondent no.4 who is admittedly senior to the petitioner, has already by his letter dated 24th March 2006 which is annexed at Exhibit-F to the petition, refused the post of Headmaster. This letter is duly received by respondent no.2. In the backdrop of above facts and circumstances, we are of the

opinion that respondent no.2 is not justified in refusing to grant approval to the petitioner's appointment as Headmaster. Respondent no.2 is duty bound to give approval to the appointment of petitioner as a Headmaster. In the circumstances, we quash and set aside the impugned order dated 24th March 2006 passed by respondent no.2. The petitioner claims that he is entitled to the post of Headmaster w.e.f. 2nd December 1998 whereas Shri B.H.Patil is dismissed from service w.e.f. 8th January 2003. Hence, the petitioner is entitled for approval from the date of dismissal of Shri B.H.Patil i.e. from 8th January 2003. We, therefore, direct respondent no.2 to give approval to the petitioner's post as Headmaster w.e.f. 8th January 2003. Rule is made absolute in the above terms. There shall be no order as to costs.

(R.V.MORE, J.) (F.I.REBELLO, J.)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4839 OF 2006

Date of Decision : 19th January 2007

For approval and signature :-

THE HON'BLE SHRI JUSTICE F.I.REBELLO, J. :

THE HON'BLE SHRI JUSTICE R.V.MORE, J. :

1. Whether Reporters of local papers may be allowed to see the judgement?

2. To be referred to the reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgement should be sent to Nagpur, Aurangabad and Goa Offices?